



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB0239

Introduced 2/4/2009, by Sen. Heather Steans - David Koehler

SYNOPSIS AS INTRODUCED:

805 ILCS 180/1-5
805 ILCS 180/1-10
805 ILCS 180/1-26 new

Amends the Limited Liability Company Act. Allows for the creation of a low-profit limited liability company or L3C. Defines "L3C" or "low-profit limited liability company" to mean a limited liability company that does not have as a significant purpose the production of income or the appreciation of property and is organized for a business purpose that satisfies and is at all times operated to satisfy each of the following requirements: (1) it significantly furthers the accomplishment of one or more educational purposes within the meaning of the Internal Revenue Code of 1986 and would not have been formed but for the company's relationship to the accomplishment of charitable or educational purposes; (2) no significant purpose of the company is the production of income or the appreciation of property; and (3) the purpose of the company is not to accomplish one or more political or legislative purposes. Also provides that if a company which met the requirements of a low-profit limited liability company at its formation should at any time cease to satisfy any one of those requirements, it shall then immediately cease to be a low-profit limited liability company. Makes other changes.

LRB096 07539 KTG 17634 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Limited Liability Company Act is amended by
5 changing Sections 1-5 and 1-10 and adding Section 1-26 as
6 follows:

7 (805 ILCS 180/1-5)

8 Sec. 1-5. Definitions. As used in this Act, unless the
9 context otherwise requires:

10 "Anniversary" means that day every year exactly one or more
11 years after: (i) the date the articles of organization filed
12 under Section 5-5 of this Act were filed by the Office of the
13 Secretary of State, in the case of a limited liability company;
14 or (ii) the date the application for admission to transact
15 business filed under Section 45-5 of this Act was filed by the
16 Office of the Secretary of State, in the case of a foreign
17 limited liability company.

18 "Anniversary month" means the month in which the
19 anniversary of the limited liability company occurs.

20 "Articles of organization" means the articles of
21 organization filed by the Secretary of State for the purpose of
22 forming a limited liability company as specified in Article 5.

23 "Assumed limited liability company name" means any limited

1 liability company name other than the true limited liability
2 company name, except that the identification by a limited
3 liability company of its business with a trademark or service
4 mark of which it is the owner or licensed user shall not
5 constitute the use of an assumed name under this Act.

6 "Bankruptcy" means bankruptcy under the Federal Bankruptcy
7 Code of 1978, Title 11, Chapter 7 of the United States Code.

8 "Business" includes every trade, occupation, profession,
9 and other lawful purpose, whether or not carried on for profit.

10 "Contribution" means any cash, property, or services
11 rendered or a promissory note or other binding obligation to
12 contribute cash or property or to perform services, that a
13 person contributes to the limited liability company in that
14 person's capacity as a member.

15 "Court" includes every court and judge having jurisdiction
16 in a case.

17 "Debtor in bankruptcy" means a person who is the subject of
18 an order for relief under Title 11 of the United States Code, a
19 comparable order under a successor statute of general
20 application, or a comparable order under federal, state, or
21 foreign law governing insolvency.

22 "Distribution" means a transfer of money, property, or
23 other benefit from a limited liability company to a member in
24 the member's capacity as a member or to a transferee of the
25 member's distributional interest.

26 "Distributional interest" means all of a member's interest

1 in distributions by the limited liability company.

2 "Entity" means a person other than an individual.

3 "Federal employer identification number" means either (i)
4 the federal employer identification number assigned by the
5 Internal Revenue Service to the limited liability company or
6 foreign limited liability company or (ii) in the case of a
7 limited liability company or foreign limited liability company
8 not required to have a federal employer identification number,
9 any other number that may be assigned by the Internal Revenue
10 Service for purposes of identification.

11 "Foreign limited liability company" means an
12 unincorporated entity organized under laws other than the laws
13 of this State that afford limited liability to its owners
14 comparable to the liability under Section 10-10 and is not
15 required to register to transact business under any law of this
16 State other than this Act.

17 "Insolvent" means that a limited liability company is
18 unable to pay its debts as they become due in the usual course
19 of its business.

20 "Limited liability company" means a limited liability
21 company organized under this Act.

22 "L3C" or "low-profit limited liability company" means a
23 limited liability company organized under this Act for a
24 business purpose which satisfies the provisions of Section 1-26
25 of this Act and does not have as a significant purpose the
26 production of income or the appreciation of property.

1 "Manager" means a person, whether or not a member of a
2 manager-managed company, who is vested with authority under
3 Section 13-5.

4 "Manager-managed company" means a limited liability
5 company which is so designated in its articles of organization.

6 "Member" means a person who becomes a member of the limited
7 liability company upon formation of the company or in the
8 manner and at the time provided in the operating agreement or,
9 if the operating agreement does not so provide, in the manner
10 and at the time provided in this Act.

11 "Member-managed company" means a limited liability company
12 other than a manager-managed company.

13 "Membership interest" means a member's rights in the
14 limited liability company, including the member's right to
15 receive distributions of the limited liability company's
16 assets.

17 "Operating agreement" means the agreement under Section
18 15-5 concerning the relations among the members, managers, and
19 limited liability company. The term "operating agreement"
20 includes amendments to the agreement.

21 "Organizer" means one of the signers of the original
22 articles of organization.

23 "Person" means an individual, partnership, domestic or
24 foreign limited partnership, limited liability company or
25 foreign limited liability company, trust, estate, association,
26 corporation, governmental body, or other juridical being.

1 "Registered office" means that office maintained by the
2 limited liability company in this State, the address, including
3 street, number, city and county, of which is on file in the
4 office of the Secretary of State, at which, any process,
5 notice, or demand required or permitted by law may be served
6 upon the registered agent of the limited liability company.

7 "Registered agent" means a person who is an agent for
8 service of process on the limited liability company who is
9 appointed by the limited liability company and whose address is
10 the registered office of the limited liability company.

11 "Restated articles of organization" means the articles of
12 organization restated as provided in Section 5-30.

13 "State" means a state, territory, or possession of the
14 United States, the District of Columbia, or the Commonwealth of
15 Puerto Rico.

16 "Transfer" includes an assignment, conveyance, deed, bill
17 of sale, lease, mortgage, security interest, encumbrance, and
18 gift.

19 (Source: P.A. 90-424, eff. 1-1-98.)

20 (805 ILCS 180/1-10)

21 Sec. 1-10. Limited liability company name.

22 (a) The name of each limited liability company as set forth
23 in its articles of organization:

24 (1) shall contain the terms "limited liability
25 company", "L.L.C.", or "LLC", or, if organized as a

1 low-profit limited liability company under Section 1-26 of
2 this Act, shall contain the term "L3C";

3 (2) may not contain a word or phrase, or an
4 abbreviation or derivation thereof, the use of which is
5 prohibited or restricted by any other statute of this State
6 unless the restriction has been complied with;

7 (3) shall consist of letters of the English alphabet,
8 Arabic or Roman numerals, or symbols capable of being
9 readily reproduced by the Office of the Secretary of State;

10 (4) shall not contain any of the following terms:
11 "Corporation," "Corp.," "Incorporated," "Inc.," "Ltd.,"
12 "Co.," "Limited Partnership" or "L.P.";

13 (5) shall be the name under which the limited liability
14 company transacts business in this State unless the limited
15 liability company also elects to adopt an assumed name or
16 names as provided in this Act; provided, however, that the
17 limited liability company may use any divisional
18 designation or trade name without complying with the
19 requirements of this Act, provided the limited liability
20 company also clearly discloses its name;

21 (6) shall not contain any word or phrase that indicates
22 or implies that the limited liability company is authorized
23 or empowered to be in the business of a corporate fiduciary
24 unless otherwise permitted by the Commissioner of the
25 Office of Banks and Real Estate under Section 1-9 of the
26 Corporate Fiduciary Act. The word "trust", "trustee", or

1 "fiduciary" may be used by a limited liability company only
2 if it has first complied with Section 1-9 of the Corporate
3 Fiduciary Act; and

4 (7) shall contain the word "trust", if it is a limited
5 liability company organized for the purpose of accepting
6 and executing trusts.

7 (b) Nothing in this Section or Section 1-20 shall abrogate
8 or limit the common law or statutory law of unfair competition
9 or unfair trade practices, nor derogate from the common law or
10 principles of equity or the statutes of this State or of the
11 United States of America with respect to the right to acquire
12 and protect copyrights, trade names, trademarks, service
13 marks, service names, or any other right to the exclusive use
14 of names or symbols.

15 (c) (Blank).

16 (d) The name shall be distinguishable upon the records in
17 the Office of the Secretary of State from all of the following:

18 (1) Any limited liability company that has articles of
19 organization filed with the Secretary of State under
20 Section 5-5.

21 (2) Any foreign limited liability company admitted to
22 transact business in this State.

23 (3) Any name for which an exclusive right has been
24 reserved in the Office of the Secretary of State under
25 Section 1-15.

26 (4) Any assumed name that is registered with the

1 Secretary of State under Section 1-20.

2 (5) Any corporate name or assumed corporate name of a
3 domestic or foreign corporation subject to the provisions
4 of Section 4.05 of the Business Corporation Act of 1983 or
5 Section 104.05 of the General Not For Profit Corporation
6 Act of 1986.

7 (e) The provisions of subsection (d) of this Section shall
8 not apply if the organizer files with the Secretary of State a
9 certified copy of a final decree of a court of competent
10 jurisdiction establishing the prior right of the applicant to
11 the use of that name in this State.

12 (f) The Secretary of State shall determine whether a name
13 is "distinguishable" from another name for the purposes of this
14 Act. Without excluding other names that may not constitute
15 distinguishable names in this State, a name is not considered
16 distinguishable, for purposes of this Act, solely because it
17 contains one or more of the following:

18 (1) The word "limited", "liability" or "company" or an
19 abbreviation of one of those words.

20 (2) Articles, conjunctions, contractions,
21 abbreviations, or different tenses or number of the same
22 word.

23 (Source: P.A. 92-33, eff. 7-1-01; 93-59, eff. 7-1-03.)

24 (805 ILCS 180/1-26 new)

25 Sec. 1-26. Low-profit limited liability company.

1 (a) Notwithstanding the provisions of Section 1-25, a
2 low-profit limited liability company shall at all times
3 significantly further the accomplishment of one or more
4 charitable or educational purposes within the meaning of
5 Section 170(c)(2)(B) of the Internal Revenue Code of 1986, 26
6 U.S.C. 170(c)(2)(B), or its successor, and would not have been
7 formed but for the relationship to the accomplishment of such
8 charitable or educational purposes.

9 (b) A limited liability company which intends to qualify as
10 a low-profit limited liability company pursuant to the
11 provisions of this Section shall so indicate in its articles of
12 organization, and further state that:

13 (1) no significant purpose of the company is the
14 production of income or the appreciation of property;
15 however, the fact that a person produces significant income
16 or capital appreciation shall not, in the absence of other
17 factors, be conclusive evidence of a significant purpose
18 involving the production of income or the appreciation of
19 property; and

20 (2) no purpose of the company is to accomplish one or
21 more political or legislative purposes within the meaning
22 of Section 170(c)(2)(D) of the Internal Revenue Code of
23 1986, 26 U.S.C. 170(c)(2)(D), or its successor.

24 (c) If a company that met the requirements of this Section
25 at its formation at any time ceases to satisfy any one of such
26 requirements, it shall immediately cease to be a low-profit

1 limited liability company. However, by continuing to meet all
2 other requirements of this Act and by forthwith changing its
3 name pursuant to Section 1-10, it shall continue to exist as a
4 limited liability company.